

**TAB 21**

## **APPENDIX A – NH 271 EXHIBITS**

### **Section 271 Deliberations Statement**

## Section 271 Deliberations

On March 1, 2002, we notified Verizon New Hampshire of our conclusions regarding its compliance with certain competitive checklist items required by Section 271 (c)(1)(A) of the federal Telecommunications Act of 1996. At that time, we explained that we could conclude that Verizon's proposal was for the public good if it satisfied ten specified conditions.

On March 15, 2002, Verizon replied that six of the conditions were acceptable but that the other four were not acceptable for various reasons. The four conditions in controversy were: #2, which concerned an across the board reduction of UNE rates; #3, which concerned the revision of the unbundled local switching rate; #5, which concerned increased broadband access; and #9, which concerned DC power charges. Subsequently, we received responses to Verizon's position from the Consumer Advocate, the Joint CLECs, AT&T, Worldcom and Staff.

On April 10, 2002, we issued a letter noting that Verizon had raised some reasonable points and we asked the parties to work together to develop any clarifications, modifications or substitutions that could bring this matter to a fair resolution. We also directed Staff to file a report on the process.

On May 6, 2002, Staff essentially reported that the parties were unable to reach agreement and Staff therefore made certain recommendations regarding the four disputed conditions.

On June 5, 2002, Verizon submitted a letter summarizing its position on the conditions and making certain offers regarding the UNE rate and broadband conditions. The Company proposes with respect to condition #2, UNE rates, to lower rural loop rates to \$25, to reduce switching rates by roughly 18%, to reduce DS-1 loop rates by 20%, and to reduce DUF rates by approximately 70%. As for condition #5, broadband access, Verizon proposes to conduct a limited trial offering of ISDN flat rate service at \$30 monthly for residential customers and \$50 monthly for business customers.

I will begin by addressing conditions #3 and #9. With respect to the unbundled local switching charge, Staff reviewed the Company's cost study, discussed the issue with CLEC experts and the Consumer Advocate, and concluded that Verizon had made a legitimate argument that there was no double recovery of costs. Accordingly, Staff recommended that this condition be eliminated. I concur with this recommendation. With respect to DC power charges, Staff notes that there is a docket pending that can address the issue and that the condition can be eliminated. I concur with that recommendation as well.

With respect to condition #2, UNE rates, Verizon argues that existing rates were set within the past year and that an across the board reduction violates their due process rights. They state as well that UNE rates could be set in a new proceeding. Instead of an across the board rate decrease, Staff recommends targeting certain rates and discounting them as specified in our March 1 letter. In the alternative, Staff suggests that the Commission could open a new rate docket and set temporary rates. Verizon now proposes to lower its rural loop rate, switching rates, DS-1 loop rates and DUF rates in varying amounts. To address this issue, I would propose a condition that adopts the Company's offered rate changes and I would open a new docket to address Verizon's cost of capital, which can then be applied to Verizon's UNE rates.

With respect to condition #5, broadband access, Verizon opposes our condition to lower intrastate special access charges and argues that it violates federal law. Nonetheless, Verizon explained that it was willing to explore other alternatives. In its report, Staff disagreed with Verizon's legal position but recommends alternative broadband conditions. Staff suggests

setting a \$500 monthly flat rate for T-1 services, which would benefit businesses in rural areas. Staff also proposes a \$30 monthly flat rate for residential ISDN services.

Verizon now proposes to engage in a pilot program for ISDN services for both business and residential customers. To address this issue, I would propose a condition that adopts, in principle, the Company's proposal regarding ISDN but I would extend the trial period to one year for six exchanges in rural areas. I would also make the business offering available to customers with up to six lines. Finally, I would eliminate the proviso that the trial would be discontinued in exchanges where Verizon introduced DSL. In addition, I would open a new docket to address the current T-1 tariff.

With respect to broadband access, I think it is important to point out that Verizon has not challenged our decision in the dry copper case, which we believe has real potential to expand broadband opportunities. I am hopeful that these actions are an indicator that Verizon NH now intends to embrace the philosophy of its President, Ivan Seidenberg, who said earlier this year, "As we move forward from here, we're focused on driving high-speed access over all our customer connections...and, ultimately to the ubiquitous broadband connectivity that will integrate all this technology into a seamless whole."

When we issued our March 1 letter, we said that Verizon's proposal to enter the interstate market would be for the public good if 10 specified conditions were satisfied. On re-examination, it appears that condition #3 was based on an erroneous cost recovery assumption and that condition #9 was limited in its application and more properly addressed elsewhere. Consequently, it is fair to conclude that Verizon's proposal would be for the public good if the remaining eight conditions were satisfied.

Of the eight pertinent conditions, six were previously agreed to and the remaining focus has been on UNE rates and broadband access. The question is whether Verizon's current positions on those conditions are satisfactory. Clearly, New Hampshire ratepayers would be better off if Verizon were willing to embrace fully our March 1 conditions or the May 6 recommendations made by Staff. Their refusal to do so, however, does not necessarily mean that their June 5 proposal is inconsistent with our overall position set forth on March 1 or that their proposal is not for the public good. In fact, I continue to believe, on balance, that New Hampshire consumers are better served by supporting Verizon's entry into the interstate market than they would be by blocking Verizon's entry into that market. In that context, I am persuaded that the combination of the conditions set forth here and the other proceedings we are opening is in the public interest.

I take this position because I believe there are benefits to consumers to be derived from Verizon's entry into the interstate market, that the Commission can effectively regulate Verizon's interactions with local competitors and that blocking Verizon's entry into the interstate market could have negative consequences for consumers. Accordingly, I move that we support Verizon's Section 271 application consistent with the eight conditions as I have described them.